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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re A.B., a Person Coming Under the
Juvenile Court Law.

ORANGE COUNTY SOCIAL
SERVICES AGENCY,

Plaintiff and Respondent,

v.

K.B,

Defendant and Appellant.

G057148

(Super. Ct. No. 18DP0432)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Dennis J. Keough, Judge. Affirmed in part and reversed in part.

Brent Riggs, under appointment by the Court of Appeal, for Defendant and Appellant.

Leon J. Page, County Counsel, Karen L. Christensen and Aurelio Torre, Deputy County Counsel, for Plaintiff and Respondent.

Mother appeals from a judgment of the juvenile court declaring minor a dependent of the court and removing minor from mother's custody. Mother contends the evidence presented at the jurisdictional hearing did not support exercising jurisdiction, and, alternatively, did not support a disposition of removing minor. The court found it had jurisdiction under Welfare and Institutions Code section 300, subdivision (b)(1), which required it to find "a substantial risk that the child will suffer . . . serious physical harm" as a result of mother's negligence.¹ The standard for removing minor from mother's custody is similar, except that the finding must be by clear and convincing evidence, and there must be "no reasonable means by which the minor's physical health can be protected without removing the minor from" mother's custody. (§ 361, subd. (c)(1).)

Boiled down to its essentials, the court based its ruling on mother's poor judgment in her choice of shelter and caretakers. In the incident giving rise to this case, mother left minor with two caretakers overnight: one a cancer patient whom she knew well, the other a caretaker she did not know well. The caretaker purchased and used drugs and got into a physical altercation with the cancer patient, all while minor was in the same room. Mother, who is a transient, failed to charge her phone that night, and when the police arrived at the scene of the altercation, mother could not be reached. Two years before that, mother had directed a friend to pick up minor at school. The school refused to release minor because school personnel believed the friend was under the influence. Four years before that, mother left minor with her sister, who was found to be high on methamphetamine. Despite these incidents, minor was healthy, doing well in school, and strongly bonded to mother.

We affirm in part and reverse in part. We affirm the court's jurisdictional ruling on the ground that mother's poor judgment presented a genuine danger to minor.

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All statutory references are to the Welfare and Institutions Code.

However, we reverse the dispositional order on the ground that Orange County Social Services Agency (SSA) failed to prove that removal was the only way to mitigate that danger.

FACTS

The Motel Incident

Mother was living in a motel immediately prior to the underlying proceeding, which required her to vacate every 28 days. Her time had come. That night, she and minor (who was 7 years old) stayed with a friend she had known approximately eight years, James, who was also staying in a motel room. James was undergoing treatment for colon cancer and had a caretaker, who was a friend of his, named Elijah. Mother did not know Elijah well, though she had met him a couple of times.

The following morning, mother left to move some property to a new storage unit. She left minor with James and Elijah. James had watched minor a handful of times in the past. She returned later that day and brought lunch for everyone, stayed a while to watch videos, and then went down to her car to organize her property. Later that evening, around 6:00 p.m., mother returned to James's motel room and knocked on the door, but no one answered. Mother assumed they were napping. The hotel manager approached mother asking if she needed assistance, but she declined. Instead, mother went to her storage unit and fell asleep in her car, but she forgot to put her phone on the charger. The battery depleted. From that point until approximately 11:30 a.m. the following day, there was no way to reach mother.

At approximately 11:00 p.m., James awoke and noticed his car keys, wallet, and cell phone were missing from the nightstand. He had begun to suspect Elijah was using drugs and he worried that Elijah might steal from him to fund his drug habit. So he confronted Elijah. Elijah had, in fact, taken the items, but rather than return them, he left

the motel room, went to the parking lot, and threw the wallet and keys. James was able to find both. He went back to his room and fell back asleep with minor on the bed next to him.

About 20 minutes later, Elijah returned to the room, jumped on top of sleeping James, and punched his buttocks, causing James—a colon cancer patient—to bleed. Elijah then left the room without further incident. James called the police who ultimately arrested Elijah for domestic violence, causing harm to a dependent, willful cruelty to a child, and being under the influence of a controlled substance.

Both a responding officer and James made multiple attempts to contact mother that night, but to no avail; her cell phone was dead. James was not in good shape after the attack (a police officer described him as frail, pale and sickly), and mother had not left extra clothes or other provisions for minor.² The responding officer decided to transport minor to Orangewood Children and Family Center (Orangewood).

At Orangewood, the day after the incident, a social worker interviewed minor. Minor appeared healthy and appropriately groomed, except that he did not have any socks and he had four mosquito bites. Mother had been treating the bites with a cream but minor did not have the cream with him. Minor reported that he lived with mother and a man named Roger (whose presence in minor's life is somewhat problematic; more on that below). Minor said they lived in various motels. He had not seen drugs or anyone drinking alcohol, nor had he seen domestic violence, although mother and Roger occasionally had disagreements.

The social worker also asked minor about the incident with James and Elijah. Minor reported on certain details that he had not told the police officer. He said Elijah choked James before punching him, and minor saw Elijah purchase drugs in

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Mother testified this was because she had not planned on leaving him there.

exchange for James's electronic tablet. Elijah was threatening to send him to juvenile hall. Minor was scared.

Minor was interviewed again at Orangewood, 11 days later, by a different social worker. This time minor reported that he lived with his mother and denied that anyone else lived with them. As to the incident with James and Elijah, minor claimed he was asleep and did not witness the altercation.

When mother's phone was charged the morning following the motel incident, she retrieved her voicemail and discovered what had transpired. She immediately called the police, who directed her to contact SSA.

The Petition

Shortly afterward, SSA filed the underlying petition, and the court ordered minor detained on an emergency basis. In addition to relating the foregoing events, the petition alleged three prior instances of mother acting negligently in connection with minor.

The first occurred in 2012 when mother left then two-year-old minor with his aunt (mother's sister) and uncle. The aunt and uncle were arrested for possession of methamphetamine, and the aunt was found to be under the influence. Minor had a cast on his arm at that time, which, mother explained, was due to minor breaking his arm while the aunt was watching him. SSA substantiated this referral for general neglect.

The second substantiated referral for general neglect occurred a year later, when mother left three-year-old minor alone in the bathtub. She claimed she had been in the backyard for only a minute or two.

The third alleged instance of neglect was apparently not the subject of a referral, but instead was more generally her willingness to let her friend Roger around minor. The petition describes Roger as "a known abuser of illicit substances." In 2012, Roger was at mother's house, despite a probation condition prohibiting him from being

there. In 2016, mother was sick one day and asked Roger to pick minor up from school. School personnel determined Roger was under the influence and refused to release minor to him, even though he was listed as an emergency contact for minor. The school official described Roger as getting “in her face” when the school would not release minor. Mother ended up coming to the school to get minor. While there, Roger yelled at her, and the school official described mother as scared of him. Nonetheless, mother took Roger off minor’s contact list and assured the school they would not have to worry about Roger anymore as “he would be gone for a long time.” When SSA contacted the school official, she expressed surprise that SSA had not intervened sooner, stating that different guys pick up minor who are “not the best.”

The petition also set forth mother’s criminal history, which included “arrests and/or convictions” for various drug- and alcohol-related offenses, as well as assault and battery. All of those arrests and/or convictions occurred in 2009 or before, prior to minor’s birth in 2010. Mother also reported that she had not abused drugs since 2007.³

Finally, the petition alleges that mother was homeless and had been living in motels with minor. The court would subsequently interlineate the finding that “[m]other does not have and has not made arrangements for reasonably safe housing and daycare for [minor].”

Pretrial Proceedings

The petition was filed May 1, 2018. The jurisdictional hearing was scheduled to commence on May 17, 2018, but was continued multiple times. It would ultimately commence on October 30, 2018, and, over the course of five different

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The petition also contains extensive allegations of the father’s criminal history. The father is not a party to this appeal, nor was he involved in minor’s life, and thus we ignore the allegations concerning the father.

hearings, it would not conclude until December 18, 2018. In the meantime, mother was given visitation and offered voluntary services, including drug testing. However, mother said she did not wish to participate in a drug program unless the court ordered it. In June 2018, minor was placed in foster care.

A social worker interviewed mother in anticipation of the initial jurisdictional hearing. She reported that minor was performing well in school, getting good grades, and was well behaved. Minor did, however, have excessive tardies. Mother explained that these were generally “1 minute late” due to being caught in traffic.

Mother had been living off an inheritance she received when her grandfather passed away, but she was running out of money. She had previously worked as a telemarketer; she had little interest in returning to that job. The reason mother had been living in motels is she had bad credit and was on a “do not rent” list. She explained she was on this list “for having pets when she wasn’t supposed to and issues with [Roger] showing up and causing problems.” At the time of the interview, she had recently started staying at a motel, which the social worker described as “tidy” with “no safety hazards.”

The social worker who interviewed minor shortly after his placement at Orangewood reported that minor “appeared healthy, well groomed, and well cared for.” Minor appeared to be developmentally on track for his age. The social worker ultimately concluded that minor’s “basic needs appear to have been taken care of by his mother and no signs of abuse or neglect are present.” Minor reported enjoying school and doing well there.

In the months prior to the jurisdictional hearing, mother initially began drug testing with consistent negative tests. But she stopped testing after the first three tests. Mother ultimately completed two parenting courses: a four-session in-person program, and an online program. Neither met SSA’s requirements for a parenting course. She also started individual counseling but quit after three or four sessions because she could no longer afford to go.

The foster father reported to the social worker that visits between mother and minor were going “great, no red flags at all.” Mother consistently attended, and even asked for more visits. The only significant concern was that mother tended to be late, though her tardiness was improving over time. Minor seemed happy and well cared for in his foster placement. When the subject of living apart from his mother was broached, however, he became teary eyed and could not verbalize why he was crying. When asked about that at another meeting, he again became teary eyed and quietly said he wanted to go home with his mother.

The Jurisdictional Hearing

At the jurisdictional hearing, seven months after the petition was filed, mother testified she was living in Riverside. She was living with an ex-boyfriend who she had seen only once in the past 25 years, but with whom she had stayed in contact over social media. When asked what she had done to ensure this friend does not have a criminal or substance-abuse history, she said, “I just know he doesn’t.” How? “Because I know him.”

They were living in a trailer. The trailer had two bedrooms, although Mother had never seen one of them. The trailer was on a plot of land where the ex-boyfriend was building a house, which mother planned to live in once completed. Mother had not asked the ex-boyfriend if minor could stay in the trailer, but she was “sure he would say yes.”

The ex-boyfriend was providing some financial support for mother, but she was unsure how long he would continue to provide financial support; he was encouraging her to find a job. When asked if mother was romantically involved with the ex-boyfriend, she replied, “We were 25 years ago, but as of right now, he is just a friend. He said he wants to, like, see where it could go, if we could rekindle. If nothing else, he wants to be there as a friend to me and to [minor].”

Mother was also asked if she had anywhere to live with minor, in Orange County, if minor were released to her under a conditional release with intensive supervision program, which required that they reside in Orange County. She replied she had a family friend, Jose, who she had known for 30 years, who had an apartment she could stay in with minor. Mother had been in contact with Jose at least a couple of times per month over the past 30 years. Mother had not discussed with Jose how long they could stay in his apartment, however.

The other housing option mother had explored was a list of shelters given to her by SSA. But she had not found any with waiting lists that were open, and the shelters that allowed children often required that the child be in her custody before she could apply.

Mother testified that she was initially upset when minor was taken from her, but it turned out to be a “blessing in disguise.” Her money was running out, and she was unsure how she would provide shelter for minor. This proceeding gave her the opportunity to make arrangements.

The foster father also testified. He described the visits between minor and mother as “fantastic,” noting that mother and minor “clearly have a strong bond.” Mother is the only person that minor speaks about frequently. Although minor is not outwardly affectionate in general, mother is the exception—he is affectionate with her, and vice-versa. She always asks about his school, and they have conversations about general life skills, behavior, moral issues—“kind of typical parenting conversations, which have always been good.” Mother does homework with minor, and demonstrates pride in his school work. The foster father described minor as “extremely well behaved at home.” On the few occasions where the foster father has discussed with minor whether he would like to return to mother, “he says yes . . . pretty definitively.”

The foster father noted that mother has had issues with punctuality. He described mother as “a really great person, but she clearly has a lot of chaos, and just

getting to places on time and anxiety around that and so forth have been an issue.” There were times where mother was so late that the foster father cancelled the visit, which left minor extremely disappointed and upset. After the foster father discussed the effect of that on minor, mother became more punctual. The foster father also testified that mother has been responsive to him via text or phone.

The social worker testified and articulated several concerns about mother’s parenting. First, she had concerns about mother’s ability to make proper caretaking decisions for minor; to use good judgment. This concern was rooted in the motel incident, but also encompassed the substantiated child abuse reports, mother’s association with Roger, and her failure to participate meaningfully in voluntary services, including drug testing. Second, the social worker testified that, over the course of the proceedings, mother had been disorganized, irresponsible, and incommunicative. Mother had changed her phone number about four times and never proactively updated the social worker with the new number. She testified that mother’s “communication with me has been nonexistent, only when I see her at court.” This concerned the social worker because “if we’re unable to get ahold of her, I have no way of ascertaining her progress, her participation, where she is. She is [a] transient. She moves from place to place, so it’s hard to keep track of her. She has often lost her phone, changed her phone number. So if I’m not able to follow her, it would make it difficult for the agency to . . . assess [minor’s] safety.” Third, and somewhat related, the social worker expressed concerns that mother’s anxiety was preventing her from reaching out to the social worker, which could be addressed with therapy.

On the other hand, the social worker had no concerns about minor’s physical health or dental care. She also had no concerns about minor’s performance at school. She acknowledged there was no evidence from prior reports, either substantiated

or unsubstantiated, that mother was under the influence of drugs.⁴ Finally, the social worker acknowledged that mother's greatest strength as a parent was her genuine love for minor.

In a combined ruling on jurisdiction and disposition, the court found the petition to be true, ordered minor removed from mother's custody, and ordered reunification services for mother. Focusing on the motel incident, the court found mother's explanation that she simply thought the occupants were napping to either be untrue, or patently negligent. If she thought they were napping, why did she not return an hour later to pick minor up? The risk of harm to minor from leaving him overnight with a cancer patient and a stranger was entirely foreseeable, the court found. It further found this incident to be symptomatic of a more general pattern of naiveté in relying on others. Illustrative of this pattern was mother's current living arrangement: in a trailer, with a man she barely knows, that contains a mystery room she has never seen. Ultimately, for the court, the "case turn[ed]" on mother's lack of understanding "of the cautions and circumspection" needed in selecting shelter and appropriate caregivers.

At the same time, the court noted "a certain . . . very unfortunate, almost tragic aspect of this case." Namely: Minor "seems to have a lot of positive attributes. The emotional positive connection with mother and child [is] striking. The court longs to nurture that type of relationship and send [minor] home if it believed that it was reasonably possible to do so consistent with his safety." The court also noted there was no evidence of mother ever being under the influence of drugs.

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There were seven unconfirmed or unsubstantiated child abuse reports in the record. In one of the reports, the social worker concluded, "[I]t is the belief of this Senior Social Worker that we will continue to receive child abuse reports with regards to this family as the family is currently in a legal dispute over the family home which is currently in probate and it has become apparent that the family is using Social Services as well as the Cypress Police Department in an attempt to force the mother out of the home."

Mother appealed.

DISCUSSION

Mother contends the evidence was insufficient to establish jurisdiction, or, in the alternative, that it was insufficient to warrant removal of minor from her custody. We begin with jurisdiction.

The court found minor to fall within the ambit of section 300, subdivision (b)(1), which applies when “[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, or the willful or negligent failure of the child’s parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left, or by the willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment, or by the inability of the parent or guardian to provide regular care for the child due to the parent’s or guardian’s mental illness, developmental disability, or substance abuse.” (*Ibid.*) We review a court’s jurisdictional order for substantial evidence. (*In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1649.)

The crux of this case is the motel incident, several aspects of which demonstrate negligent conduct. Mother left minor with a cancer patient and a caretaker, who she did not know, overnight. She told neither she was doing so. She left no provisions for minor. And she maintained no line of communication. We agree with the court’s assessment that harm to minor was foreseeable under these circumstances—perhaps not the specific harm that developed, but in general. We also agree with the court that mother’s explanation that she thought they were napping strains credulity. A nap at 6:00 p.m. would be unusual to begin with, but given James’s health issues, the fact that the caretaker was an unknown quantity, and that minor had no provisions, the

decision to simply leave for the night is indefensible. At minimum, she should have returned after an hour or so.

The question, then, is whether this incident, together with the other circumstances of mother's life, lead to a reasonable inference that minor is at risk of *future* harm. As one court explained, "[E]vidence of past events may have some probative value in considering current conditions. But under section 300, subdivision (b) this is only true if circumstances existing *at the time of the hearing* make it likely the children will suffer the same type of 'serious physical harm or illness' in the future. This is so because under subdivision (b) a child may be considered dependent 'only so long as is necessary' to protect the child from risk of suffering serious physical harm or illness. For this reason, 'the past infliction of physical harm by a caretaker, standing alone, does not establish a substantial risk of physical harm, "[t]here must be some reason to believe the acts may continue in the future.'"" (*In re Janet T.* (2001) 93 Cal.App.4th 377, 388, fn. omitted.)

This is a close question. Minor was healthy, doing well in school, strongly bonded to mother, and no physical harm actually befell him. Nevertheless, in close cases such as this, the standard of review tends to play an outsized role in our decision, and there were enough circumstances here to warrant an inference that mother could repeat the sort of negligent conduct that would put minor in harm's way.

The first circumstance is a pattern in mother's life of leaving minor with unfit caretakers. For example, mother left minor with a sister who was high on methamphetamine. Mother claimed she did not know, but it is hard to believe that her sister—with whom she lived—could completely hide methamphetamine use from mother, a former user herself. Another example was sending Roger, who was a known drug user, and who was high at the time, to pick up minor from school. Mother denied that he was high, but the court was free to accept the evidence that he was. There was some evidence that her relationship with Roger had continued since then. We recognize

that these incidents were remote in time, and, standing alone, they would not justify removal at this point. But the fact is mother repeated the behavior with the motel incident, giving rise to an inference that this is a pattern in her life.

The second circumstance is mother's avoidance of the social worker during the proceedings. Mother ultimately explained that her behavior was due to anxiety. But that raises a question about mother's mental fitness to make good decisions. The social worker was, aside from the judge, the person with the most influence over the disposition of this case. Playing coy with her was a poor judgment call. The same is true of mother's half-hearted efforts at engaging in services—especially drug testing. Drug testing was an excellent opportunity to prove her sobriety and commitment to reunification. And given that she had been unemployed throughout the proceedings, she offered no plausible explanation as to why she was so disengaged with the process.

The third circumstance is mother's admission that having minor removed was a "blessing in disguise" since she had a dwindling savings, no source of income, and no idea how to shelter minor. Mother testified that the break gave her a chance to find solutions. But it is not clear to us that she did. At the time of the court's ruling, she was still without any income. Her housing situation—a trailer with an ex-boyfriend who she had not seen in 25 years and who had an unrequited romantic interest in her—seemed tenuous at best. And she had not confirmed with the ex-boyfriend whether or how long minor could live there. So notwithstanding a seven-month reprieve from her parental responsibilities, she made very little progress, and thus would presumably have been right back in her desperate situation had the court immediately returned minor to her. Again, a poor judgment call.⁵

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We recognize that section 300 explicitly forbids a finding of dependency "solely due to the lack of an emergency shelter for the family." (*Id.*, subd. (b)(1); see *In re Joaquin C.* (2017) 15 Cal.App.5th 537, 565 fn. 10 ["A parent's homelessness is not a valid reason to assume dependency jurisdiction over a child, nor is it a legitimate basis for refusing an otherwise fit parent custody of his or her child"].) Nevertheless, there can

These circumstances were sufficient to warrant an inference that there is a “substantial risk” minor will suffer “serious physical harm” as a result of mother’s failure to “adequately supervise” minor, to “adequately . . . protect the child from the conduct of” potential custodians with whom she might leave minor, and to “provide the child with adequate . . . shelter” (§ 300, subd. (b)(1).)

Mother argues that *In re Roger S.* (2018) 31 Cal.App.5th 572 (*Roger S.*) requires a different result. There, the evidence presented against the mother at a jurisdictional hearing showed that her son rarely attended his school classes; the school was unable to contact his mother (*id.* at p. 575.); at school, his clothing stank (*id.* at p. 574); his mother had failed to wash his clothes and provide him with soap and a toothbrush (*id.* at p. 580); she had an old 10-year-history of drug use (*id.* at p. 578) and might have been currently using (*id.* at p. 580); she had refused to drug test and cooperate with social workers (*id.* at pp. 576, 579); she had told a social worker to go ahead and take her son (*id.* at pp. 575, 579); she was unemployed (*id.* at p. 580); she had frequent phone-number changes (*id.* at p. 577); and she had old child-abuse referrals (*id.* at pp. 577-578). The Court of Appeal reversed the jurisdictional order, concluding the evidence did not “show a nexus between these circumstances and a substantial risk of physical harm or illness to Roger.” (*Id.* at p. 583.)

The difference here is that mother’s negligence did put minor in harm’s way. In *Roger S.*, the minor smelled bad, was dirty, and had poor school performance, but there was no evidence of a risk of substantial harm to him. In other words, there was

be no doubt that homelessness can increase the risk of harm to a child. And while section 300, subdivision (b)(1), on the one hand, forbids a finding of dependency “solely” on the basis of homelessness, it, on the other, authorizes a finding of dependency based on “the willful or negligent failure of the parent or guardian to provide the child with adequate . . . shelter” Our conclusion is not based “solely” on mother’s homelessness, but instead based on her poor judgment that, in conjunction with inadequate shelter, has put minor in harm’s way and may do so again.

nothing comparable to the motel incident in *Roger S.* to establish a nexus between the negligent parenting and physical harm. Here, there was.

We turn next to the court's dispositional ruling. After declaring minor a dependent (§ 360, subd. (d)), the court is broadly confronted with two choices: to remove minor from the parent's custody, or not. (§ 361, subd. (c)(1).) If the minor is removed, normally the parent is offered reunification services (§ 361.5, subd. (a).); if the minor is not removed, the parent is offered family maintenance services (§ 362, subd. (c)).

The "bias of the controlling statute is on family preservation, *not* removal." (*In re Jasmine G.* (2000) 82 Cal.App.4th 282, 290.) To warrant removal, SSA must prove *by clear and convincing evidence* that one of five exceptions applies, including, as applicable here, "There is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's . . . physical custody." (§ 361, subd. (c)(1).) This provision embodies two elements that SSA must prove: a substantial danger, and that nothing short of removal will mitigate the danger. We review a court's decision to remove minor for substantial evidence, with a slight twist: the evidence must suffice to meet the heightened standard of proof. (*In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1654.)

The court's analysis of the substantial-danger prong piggy-backed on its section 300 analysis. We noted above that the evidence was close on that prong, and given that we must review the court's ruling under a heightened burden of proof here, the evidence is even closer. Ultimately, however, we need not decide whether the clear-and-convincing standard was met on the substantial-danger factor because we conclude SSA did not carry its burden of showing that nothing less than removal could mitigate the danger.

The court only briefly addressed the mitigation factor. It stated, “There are alternatives proffered [referring to alternative living arrangements]. There’s been no attempts to provide useful information where these particular alternatives could be evaluated. These are unknown quantities. The court would be asked to place a blind faith in the suitability of these potential housing and placement and potential daycare resources for [minor] were it to return [minor] under the present circumstances.”

However, there was an alternative: continue the dispositional hearing pending an assessment by SSA of the two alternative living arrangements. The Orange County location with Jose sounded particularly promising: a family friend of 30 years who had an apartment with space for both mother and minor. The court’s reasoning suggests that it effectively placed the burden on mother to demonstrate a suitable living arrangement. That was not her burden. The burden was on SSA to prove that only removal could adequately mitigate the danger of mother placing minor in unsuitable housing or with an unsuitable caretaker. That, SSA did not do.

The actual danger driving this case is the potential of mother exercising poor judgment with regard to appropriate shelter and caregivers. But that sort of danger seems particularly amenable to being managed through a combination of supervision and coaching. And while that danger was, of course, a reasonable concern for the court, the evidence showed that this sort of judgment error was a rare occurrence during minor’s lifetime. There was simply no urgent need to remove minor, provided SSA approved of either of mother’s housing arrangements.

We do recognize a legitimate concern raised by SSA: that mother’s failure to maintain contact with SSA would make supervision difficult. However, mother’s contacts with the social worker up to the point of the jurisdictional hearing were voluntary. Moreover, mother was in regular, responsive communication with the foster father, demonstrating that she is capable of adequate communication when necessary. Under a family maintenance or conditional release with intense supervision program,

communication would be necessary. In light of the fact that minor was generally healthy and doing well, and given the, in the court's words, "striking" emotional bond between mother and minor, she should be given the chance to demonstrate her ability to have minor safely in her custody.

As a practical matter, we recognize that several months have gone by since the dispositional order. Events may have transpired that would counsel either for or against vesting custody back with mother. Accordingly, we will reverse the dispositional order with instructions to conduct a new dispositional hearing where SSA can present its assessment of potential housing arrangements. All parties may introduce new evidence on the issue of removal at that hearing. Pending the outcome of that hearing, minor may remain in foster placement at the court's discretion.

DISPOSITION

The court's order finding the petition to be true and deeming minor a dependent of the court is affirmed. The court's dispositional order removing minor from mother's custody is reversed. The court is instructed to hold a new dispositional hearing consistent with this opinion.

IKOLA, J.

WE CONCUR:

FYBEL, ACTING P. J.

GOETHALS, J.